

**Supplemental Letter of Findings Number: 06-0166**  
**Sales/Use Tax**  
**For the Year 2002-2004**

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**ISSUES**

**I. Sales/Use Tax—Manufacturing.**

**Authority:** IC § 6-2.5-4-2.

Taxpayer protests a use tax assessment for dyed diesel fuel that it claims is used in manufacturing.

**II. Sales/Use Tax—Refunds.**

**Authority:** IC § 6-2.5-6-14.1.

Taxpayer protests the denial of a refund for sales tax erroneously collected from one of its customers.

**STATEMENT OF FACTS**

Taxpayer is a company engaged in the business of providing explosive services for quarries. As part of its business, Taxpayer purchased dyed (offroad) diesel fuel. Taxpayer placed the fuel in one compartment of a specialized vehicle. A second compartment contained an oxidizer, such as ammonium nitrate.

When Taxpayer arrived at a quarry, the specialized truck combined the fuel and oxidizer to produce an explosive mixture. The mixture was inserted into a hole drilled in the solid rock, then detonated. After the explosion, the loosened rock could be further processed into usable products. Taxpayer purchased the diesel fuel exempt from sales tax, claiming a manufacturing exemption based on the fuel's use as a blasting material.

In addition, Taxpayer was assessed use tax on undyed diesel fuel used in Taxpayer's vehicles. Taxpayer provided receipts for its purchases of fuel; however, the receipts did not separately list sales tax imposed on the fuel. The Department imposed use tax with respect to these purchases of undyed diesel fuel.

Taxpayer was further assessed use tax with respect to vehicles that it leased from third-parties. Finally, Taxpayer filed a claim for refund with respect to sales tax that it erroneously collected from one of Taxpayer's vendors, which the Department denied.

Taxpayer protested the assessment and the denial of refund. The Department conducted a hearing, and issued a Letter of Findings partially sustaining and partially denying Taxpayer's protest.

Taxpayer requested a reconsideration of the manufacturing exemption and the denial of refund. The Department granted and conducted a rehearing. This Supplemental Letter of Findings results. Additional facts will be supplied as necessary. Any issues not specifically addressed in this Supplemental Letter of Findings are considered to be determined in accordance with the Department's audit and the original Letter of Findings.

**I. Sales/Use Tax—Manufacturing.**

**DISCUSSION**

The first issue is with respect to use tax imposed on fuel that Taxpayer purchased for its blasting operations. Taxpayer argues that its fuel oil is combined with an oxidizer (generally ammonium nitrate) to create a mixture that is injected into holes for blasting solid stone. Taxpayer asserted that the blasting of solid rock to produce marketable stone constitutes manufacturing. The Department denied the exemption based on the fuel not being used in Taxpayer's manufacturing, but rather Taxpayer's customers' manufacturing.

Taxpayer now asserts that it is an industrial processor and is therefore entitled to an exemption for the fuel consumed in its rock blasting operations.

Under IC § 6-2.5-4-2(c), an industrial processor is a person who:

- (1) acquires tangible personal property owned by another person;
- (2) provides industrial processing or servicing, including enameling or plating, on the property; and
- (3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

In the current protest, Taxpayer explodes rock on behalf of its customers. The rock remains at the customer's quarry at all relevant times of Taxpayer's blasting activities. Taxpayer is providing a service on behalf of its customers, not industrial processing of the rock in question. Taxpayer has not established that it is an industrial processor with respect to its customers' rock, and therefore is denied with respect to the fuel it consumes in blasting rock.

**FINDING**

Taxpayer's protest is denied.

**II. Sales/Use Tax—Refunds.**

**DISCUSSION**

Taxpayer argues that the Department should grant a claim for refund for one of its customers to which Taxpayer charged sales tax. Taxpayer asserts that the customer was exempt from sales tax. Thus, Taxpayer's charges for sales tax were erroneous and Taxpayer should be refunded the money.

Taxpayer charged the customer \$30,941 of sales tax. During previous periods, Taxpayer took credits of \$12,334 against its sales tax due on previous sales tax returns, and granted the customer these amounts as offsets against the customer's purchases. Taxpayer filed a claim for the remaining \$18,607 not previously taken as a credit.

To receive a refund of sales tax remitted on behalf of its customer, Taxpayer must agree to refund the erroneous tax payment to the customer. IC § 6-2.5-6-14.1 (previously codified as IC § 6-2.5-6-14 (first version) prior to July 1, 2004) states,

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In this particular instance, Taxpayer has credited the customer from whom Taxpayer erroneously collected the tax. Taxpayer has provided sufficient documentation to demonstrate that it refunded the money to the customer and thus substantiate Taxpayer's entitlement to the claimed refund.

#### **FINDING**

Taxpayer's protest is sustained.

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